

HMK/jb GA 7921

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK,

ECF CASE

Plaintiff,

07 CIV 6421 (PAC)(THK)

-against-

ADVANCE OCEAN INC., NIPPON YUSEN
KAISHA, NYK LINE (NORTH AMERICA)
INC., BURLINGTON NORTHERN SANTA FE
CORPORATION, BNSF RAILWAY COMPANY,
THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY,

DECLARATION IN
OPPOSITION TO
DEFENDANTS BNSF
AND NYK LINES'
MOTION TO TRANSFER
VENUE

Defendants.

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Steven P. Calkins, hereby declares under the penalty of perjury that the following is true and correct as prescribed in 28 U.S.C. §1746:

1. I am an attorney admitted to practice law before this Court and am a member of the law firm of Kingsley, Kingsley & Calkins, attorneys for plaintiff, Great American Insurance Company of New York, and make this declaration in opposition to the motion of defendants BNSF and NYK Lines to transfer venue from New York to California.

2. Attached hereto as Exhibit 6 is a copy of Plaintiff's Initial Disclosures Pursuant to Rule 26(a)(1), which lists two of Great American's employees knowledgeable about this claim, the surveyor of the damages, Mr. Daniel H. Boltz, and plaintiff's insured's employee, Ms. Judy Toltzman, Transportation Supervisor for Maclean Power Systems; and attaches Mr. Boltz'

survey report with photographs; the surveyor's invoice; the commercial invoice for the goods; Maclean's claim notice letter to defendant Advance Ocean Inc. dated August 16, 2006; the Advance Ocean Booking Confirmation to Berardino & Associates, plaintiff's insured's freight forwarder, dated June 12, 2006; and defendant NYK Lines' Booking Fax Confirmation to defendant Advance Ocean Inc. dated June 9, 2006.

3. Attached hereto as Exhibit 7 is the draft Declaration of Robert Mohn in Opposition to Defendants' Motions, which has not yet been signed by the witness. The information contained in Mohn's Declaration was ascertained by the undersigned directly from Mr. Mohn, and the delay in signing is at the request of Mr. Mohn who has consulted the attorney for Berardino & Associates in Chicago, and is awaiting his counsel's advice. Accordingly, plaintiff submits the unsigned Mohn Declaration herein, and will substitute a signed version of this Declaration as soon as possible with the permission of the Court.

WHEREFORE, defendants BNSF and NYK Lines' motion to transfer venue must be denied, and discovery allowed to proceed on plaintiff's claims herein.

Dated: February 15, 2008



Steven P. Calkins